PUBLIC PROSECUTOR v. LIM KIT SIANG

[O.Cr.J. (Abdul Hamid J.)
October 2-7, 11-13, 16, 17, 31, November 1, 2 and 7, 1978]
[Kuala Lumpur — Federal Territory Crimnial Trial Nos. 13, 14 and 15 of 1978]

Criminal Law and Procedure — Receipt of unauthorised official secret information — Disclosure of secret information — Parliamentary privilege — Disclosure to member of Parliament — Official Secrets Act, 1972, ss. 8(1), (2) and 11.

Official Secrets — Receipt of unauthorised official secret information and disclosure thereof — Parliamentary privilege — Official Secrets Act, 1972, ss. 8(1), (2) & 11.

Constitutional Law — Parliamentary privileges — Federal Constitution, art. 63.

In this case the accused was charged with five charges under the Official Secrets Act, 1972, for (a) receiving secret official information having reason to believe at the time of the receipt of the information that it was unauthorised; (b) failing to give information of the source of the information; (c) failing to take reasonable care to prevent publication of the information; (d) communicating the information in a speech, and (e) divulging the said information in a letter to a news review.

The information in question related to tenders in relation to the purchase of fast strike crafts for the Royal Malaysian Navy.

Held: (1) the crux of the offence under section 8(1) of the Official Secrets Act, 1972 is the wrongful communication of the official information. The wrongful communication of official information is an offence whatever the purpose of the communicator and however innocent the recipient of what he communicates. Communication is not wrongful if it is made to a person to whom he is duly authorised to communicate it or to a person to whom it is his duty to communicate it;

(2) in this case there can be no doubt that all the information contained in the documents relating to the tender exercise were classified and were clearly those documents which section 8 of the Act requires to be protected from disclosure to unauthorised persons;

(3) as the tender documents and associated documents were official secrets, a Government servant who communicates such information does so in contravention of the Act and he commits an offence under section 8(1) if he communicates such information to a person other than a person to whom he is duly authorised to communicate it or to a person to whom it was his duty to communicate it;

(4) there was abundance of evidence in this case to show that there was unauthorised communication. The nature of the information communicated to the accused clearly showed that the leakage must necessarily have originated from a Government source, from someone who had access to the documents associated with the tender exercise;

(5) in this case the accused not only received the information but received it in accordance with his desire and not contrary to it. There were sufficient materials for the court to draw the inference that the accused had reasonable grounds to believe that the official information was communicated to him in contravention of the Act;

(6) there is no provision or authority to the effect that a Member of Parliament, by virtue of his status as such, is privileged to receive official information, otherwise unauthorised. There is no authority for a Government servant to make such disclosure unless it is shown that it is the duty of the particular Government servant to disclose to a particular person and that that person is the person to whom the officer has a duty to disclose, for instance a Minister who is also a Member of Parliament;

(7) the privilege of a Member of Parliament to raise any matter in Parliament can only be invoked in respect of proceedings in Parliament and not outside the House;

(8) it could not be contended in this case that the confidentiality of the information had been broken and that authority to disclose could be implied;

(9) the charges against the accused had been proved beyond reasonable doubt and he has not raised any defence sustainable in law and in fact.

Cases referred to:-

(1) *Chandler & Ors.* v. *D.P.P.* [1964] A.C. 763.
(2) *Karanja* v. *Emperor* A.I.R. 1946 Bom. 322.
(3) *State of Kerala* v. *Balakrishna* I.L.R. 1960 Kerala 1085.
(4) *Louis* v. *Cattle* [1935] 2 K.B. 454.
(5) *R.* v. *Crisp and Homewood* (1919) 83 J.P. 121.
(6) *R.* v. *Fell* [1963] Crim. L.R. 207.

CRIMINAL TRIAL.

Tan Sri Datuk Salleh Abas (Solicitor-General) and *Datuk Abu Talib bin Othman* for the prosecution.

Louis Blom-Cooper Q.C. and *Karpal Singh* for the defence.

Cur. Adv. Vult.

Abdul Hamid J.: The accused is charged with five charges —

(a) for receiving certain secret official information relating to the Federal Government purchase of four fast strike crafts for the use of the Royal Malaysian Navy having reasonable ground to believe at the time of the receipt of the said information that it was communicated to him in contravention of the Official Secrets Act, 1972 (I shall hereafter call 'The Act'), an offence under section 8(2) of the Act;

(b) for failing to give on demand by Deputy Superintendent Cornelius, a police officer above the rank of Inspector, information he had in his power relating to an offence suspected to have been committed by a person or persons unknown under section 8(1)(i) of the Act for unlawfully communicating to him certain secret official information relating to the purchase of the four strike crafts, an offence under section 11(a)(aa) of the Act;

(c) for failing to take reasonable care of certain secret official information relating to the purchase of the four fast strike crafts he had in his possession being information obtained in contravention of the Act by not taking proper steps to prevent publication of the said information in the November 3, 1976 issue of the Rocket, an offence under section 8(1)(iv) of the Act;

(d) for communicating directly secret official information relating to the Federation Government purchase of the four fast strike crafts he had in his possession which information had been obtained in contravention of the Act to persons other than those to whom he is authorised to communicate by divulging the said information in his speech to the Selangor Graduates' Association given at the Horizon Restaurant, Damansara, Kuala Lumpur on August 21, 1976, an offence under section 8(1)(i) of the Act;

(e) for communicating directly secret official information relating to the Federal Government purchase of the four fast strike crafts he had in his possession which information had been obtained in contravention of the Act to a person other than those to whom he is authorised to communicate by divulging the said information in his letter to the

Editor of the *Far Eastern Economic Review* which letter was published in the September 24, 1976, issue of the Review, an offence under section 8(1)(i) of the Act.

The brief facts are as follows: —

Some time in 1975 the Malaysian Armed Forces Council approved the purchase of four fast strike crafts for the use of the Royal Malaysian Navy. On September 26, 1975, PERNAS Wakil, an agency organisation handling all Ministry of Defence international tenders of one million and above called for tenders and they were closed on January 8, 1976. Ten tenders were submitted and PERNAS Wakil forwarded the brochures showing technical aspects of the crafts to the Ministry of Defence stating also the prices quoted. The Ministry despatched these brochures to the Royal Malaysian Navy for technical evaluation. The Evaluation Committee in the Naval Staff Division studied them in order to make professional evaluation and to recommend the acceptability of each tender. A report was submitted to the Ministry stating that four out of ten tenders were acceptable to the Navy subject, however, to certain provisos concerning some additional items and services. The report was sent to PERNAS Wakil to prepare tender briefs for consideration of the Tenders Board.

The Tenders Board in the Ministry of Defence under the chairmanship of the Deputy Secretary-General of the Ministry met for the first time on April 1976, and tender briefs were distributed to the members. The Board did not, however, consider the tenders on that date but adjourned the matter for consideration at its next meeting on April 12, 1976. At this second meeting a Working Committee was appointed to obtain in respect of the four shortlisted tenders further information regarding the tenderers' capabilities, facilities and expertise, support services and repairs as well as the consolidated prices incorporating the expenditure involved, the extra equipment and services necessary to satisfy the prices raised in the Evaluation Report. PERNAS Wakil was directed to secure such information from each of the four shortlisted tenderers. The four shortlisted tenderers with tendered prices excluding the extra expenditure were: —

(a) Karlskronavarvet (Swedish): $106,378,960 (variable price);

(b) Hong Leong-Lursen (local): $182,651,580 (fixed price);

(c) Construction Mechanic Normandy (French): $208,528,168 (fixed price);

(d) Vosper Thornycroft: $144,189,392 (variable price).

The consolidated prices which included expenditure for extra equipment and services were $166,693,648 (fixed ceiling price); $184,011,580 (fixed price); $212,254,048 (fixed price) and $188,721,620 (fixed price) respectively.

At the third meeting the Tenders Board accepted the tender submitted by Karlskronovarvet because the consolidated price was a fixed ceiling price, the offer met with all technical requirements of the Royal Malaysian Navy and the delivery schedule was within the Royal Malaysian Navy staff requirement. Thereafter a letter was sent to the Treasury on July 2, 1976, seeking approval to award the tender to Karlskronavarvet and the Treasury approved it in a letter of July 6, 1976. The approval was subject to negotiation to secure further reduction. Negotiations were held with the successful tenderer to get the price reduced and to settle certain technical factors affecting the contract. On completion of the negotiations a final price of $157,064,718 was agreed upon, with a down payment of 30%, and the contract was signed on August 19, 1976.

It is the prosecution case that all documents and information relating to the purchase and tender exercise for the purchase of the crafts were secret official information within the meaning of and protected by the Act.

The evidence reveals that on August 21, 1976, two days after the contract was signed, the accused was a guest speaker at the Selangor Graduates' Association luncheon talk at the Horizon Restaurant, Damansara and he spoke on various topics questioning the propriety of the purchase of the crafts. Among other things he disclosed the identity of the four shortlisted tenderers, the successful tenderer, the original and final price submitted and the capability of the craft.

In the *Far Eastern Economic Review* September 24, 1976, issue a letter from the accused was published in the Letters to the Editor column under the heading "Prototype Craft may prove costly." The accused referred to the report in the Review September 10 issue under the heading "Question on a Naval Decision" and then went on to divulge the names of the four shortlisted tenderers, the successful tenderer, the original and final tender price, the mode of payment, the make of the fire control system, make and type of the engines and the capability of the craft.

Subsequently an article was published in the November 1976 issue of the Rocket the official organ of the Democratic Action Party concerning the purchase of the craft under the heading "Hanky Panky in the Royal Malaysian Navy". References similar to those set out in the letter from the accused to the *Far Eastern Economic Review* were made. There was also a paragraph in the article which runs as follows: —

> "I have also read the Treasury memorandum giving its approval for 30% or 50,000,000 down payment on signing contracts; the payment of 15% on completion of keel of first craft; another 10% on completion of keel of second craft, both to be paid in 1977 to the tune of 41.6 million; the payment of 33.3 million in 1978 and the final payment of 41.6 million in 1979, making a grand total of 166.7 million."

Police investigation commenced following a report on October 26, 1976, by Deputy Superintendent Cornelius to the effect that in consequence of article captioned "Prototype Craft may prove costly" appearing on page 6 of September 24, 1976, issue of the *Far Eastern Economic Review* he lodged a report with a view to commencing investigation under the Official Secrets Act No. 88/72. In the course of police investigation three statements were recorded from the accused, the first, on June 21, 1977, the second on June 30, 1977, and the third on March 27, 1978.

During the recording of the statements from the accused on June 30, 1977, the accused was asked to state: —

(a) the source of information regarding the increase of price of the four crafts;

(b) how he came by the information regarding the total number of tenderers and the identity of the four shortlisted tenderers;

(c) how and when he came by the details set out in his letter to the *Far Eastern Economic Review* published on September 24, 1976, concerning technical data such as weapon system and length of the craft;

(d) how in the same letter he came by the information as to the terms of payment; and lastly

(e) how he had access to the Treasury files he stated in the Rocket of November 1976's issue he had seen and read.

The accused failed to give the required information on grounds of parliamentary privilege stating further that he received the information in the course of his duties as a Member of Parliament.

A great deal of the facts before the court have not been seriously challenged by the defence; that the accused received certain information relating to the Federal Government purchase of four fast strike crafts for the use of the Royal Malaysian Navy; that the accused had in his possession information the prosecution alleged he had; that he communicated directly by divulging the information in his speech at the Selangor Graduates' Association luncheon talk and in his letter to the Editor of the *Far Eastern Economic* Review and that he failed on demand to give the information relating to an offence suspected to have been committed by person or persons unknown for unlawfully communicating the alleged secret information.

On behalf of the accused it is contended that the accused had no ground to believe that the information was communicated to him in contravention of the Act; that he did not know of any offence suspected to have been committed by any person for unlawful communication of secret information obtained in contravention of the Act. Assuming it is found that the information was secret official information, three questions arise:

1. whether the person who communicated it to the accused did so wrongfully if the accused was the person to whom:
   (a) that person was duly authorised to communicate, or
   (b) it was that person's duty to communicate it;
2. whether the accused was authorised to receive the information;
3 whether the accused was authorised to communicate the information to members of the Selangor Graduates' Association and the Editor of the *Far Eastern Economic Review.*

In respect of all charges before the court the crucial element that must in the main be satisfied is that the information relating to the Federal Government purchase of the four fast strike crafts was secret official information within the meaning of the Act. This is a common ingredient and it is so vital that if this element is lacking the whole of the prosecution case collapses.

In this connection the defence has submitted that the expression "official secrets" in the Act has reference to secret of one or other department of the Government and not to any private office or institution. It is the defence further submission that the matter must be regarded as secret and that the secret disclosed must be official in the sense of being kept so by a department of the Government.

For the prosecution it is submitted that the gist of the offence is the disclosure of unauthorised information belonging to the Government or Government departments to an unauthorised person and therefore the words "secret", "confidential", "restricted" as the defence is trying to make out are not at all very important. What is important is the unauthorised information. Whoever handles the information belonging to the Government without the Government's permission is unauthorised and in that respect it becomes secret official information within the meaning of section 8. This section is almost similar to section 2 of the United Kingdom Official Secrets Act, 1911. The learned Solicitor-General cited the case of *Chandler and Others* v. *D.P.P.*[1] at page 793 in relation to section 2(1)(a) of the Official Secrets Act, 1911 stating that the gist of the offence under section 2(1)(a) is really the wrongful communication of official information because if information belongs to the Government and if communication is done without the authority of the Government then there is a breach of the law. My attention is also drawn to certain statements in Chapter II of the Franks Committee Report on section 2 of the Official Secrets Act, 1911 which describes section 2 as a 'catch-all'. It is submitted that in the context of the Act secret official information is nothing more than the unauthorised publication of the information belonging to the Government. As for classification of the information the Government is entitled to classify because all information belongs to the Government and all information are secret and wrong classification on the part of the Government does not render information any less secret. Support for this submission is to be found in paragraph 61 of the Franks Committee Report.

With reference to the definition of the word "official" and the words "public service" in section 2 of the Act, it is submitted that "official" simply means pertaining to Government or Ministry and that word also indicates the owner of the secret. Turning to the word "secret" it is said that secret means something which nobody is entitled to reveal, something which is to be kept secret and the fact that other people know about it does not cause it to cease to be a secret. In other words, secret really is what the owner treats the document or information. To illustrate, two cases *Karanja* v. *Emperor*[2] and *State of Kerala* v. *Balakrishnan*[3] were cited.

In my view there is merit in the submission and it appears clear that the crux of the offence under section 8(1) of our Act is the wrongful communication of the official information. The view expressed

by Lord Radcliffe in *Chandler's* case at page 973 is indeed pertinent:

"The wrongful communication of official information, for instance, is itself an offence under section 2(1)(a), whatever the purpose of the communicator and however innocent the recipient of what he communicates."

On the view expressed may I add that the communication is not wrongful if it is made to a person to whom he is duly authorised to communicate it or to a person to whom it is his duty to communicate.

The effect of section 2 is further illustrated by the statement set out in paras. 17 and 18 of the Franks Committee Report which state:

"17. The main offence which section 2 creates is the unauthorised communication of official information (including documents) by a Crown servant. The leading characteristic of this offence is its catch-all quality. It catches all official documents and information. It makes no distinctions of kind, and no distinctions of degree. All information which a Crown servant learns in the course of his duty is 'official' for the purpose of section 2, whatever its nature, whatever its importance, whatever its original source. A blanket is thrown over everything; nothing escapes. The section catches-all Crown servants as well as all official information. Again, it makes no distinctions according to the nature or importance of a Crown servant's duties. All are covered. Every Minister of the Crown, every civil servant, every member of the Armed Forces, every police officer, performs his duties subject to section 2.

18. Nevertheless, governments regularly reveal a great deal of official information. These disclosures do not contravene section 2. A Crown servant who discloses official information commits an offence under the section only if the information is disclosed to someone 'other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the state his duty to communicate it.' The act does not explain the meaning of the quoted words. We found that they were commonly supposed, by persons outside the Government, to imply a fairly formal process of express authorisation. Actual practice within the Government rests heavily on a doctrine of implied authorisation, flowing from the nature of each Crown servant's job. In the words of the Home Office, 'the communication of official information is proper if such communication can be fairly regarded as part of the job of the officer concerned.' Ministers are, in effect, self-authorising. They decide for themselves what to reveal."

The section also catches other persons as can be seen from paragraph 19(c) of the report which states that:

"19. It is not only Crown servants who are affected by section 2. The section specifies five situations in which other persons are also caught —

(a) ....

(b) ....

(c) Any person in possession of official information 'which has been made or obtained in contravention' of the Official Secrets Act is prohibited from making any unauthorised disclosure of that information. This provision makes it possible to have a 'chain' of unauthorised communications with each link in the chain committing an offence by passing on the information. In effect, the unauthorised handling of official information is an offence in much the same way as handling stolen goods is an offence."

It is submitted by the prosecution, and I agree that classification of information is purely for administrative purpose and wrong classification on the part of the Government does not render information less secret. Support for the proposition may be found in paragraph 61 of the Franks Committee Report which states that —

"61. In addition to the restraints upon unauthorised disclosure which we have mentioned, the Government uses various systems of marks to identify official information which requires special protection. Security classification is the most important and most widely known of these systems. We found that some witnesses were uncertain about the significance of security classification, and its relationship to section 2. As the law now stands, there is no connection between them. Security classification is a purely administrative system, unrelated to the criminal law. The classification of a document determines the precautions to be taken in handling it. The higher the classification, the more stringent the physical precautions required (e.g. locking up in safes), and the more restrictive the rules about who may have access to the document. Classification does not determine the sanctions taken for unauthorised disclosure."

I have in considering this issue, examined two other cases cited by the learned Solicitor-General on the true construction to be placed upon the words "secret official" or "official secret". First, the *Karanja's case, supra,* which says that —

"The expression 'official secret' is ordinarily understood in the sense in which it is used in the Official Secrets Act and has reference to secrets of one or other department of the Government or the State and not to any secret of a private office or institution."

Second, the case of *State of Kerala* v. *Balakrishnan, supra* —

"Even though there is no written rule declaring budget paper before it is presented by the Fnance Minister in the Legislature as secret document, it has always been treated as such."

In another case of *Louis* v. *Cattle*[4] it is revealed that confidentiality and secrecy of a document depends upon the manner in which the owner of the document treats that document.

Broadly speaking, it may be said that secret official information within the meaning of section 8 of the Act is really the Government information the confidentiality and secrecy of which depends upon the manner in which the Government treats that information. The Act does not define the word "secret", and in the absence of any statutory definition the court is to determine its meaning. It is significant to note that the word "secret" is attached to the word "official" such that they may appropriately be referred to as "official secret". The word "official" seems to signify the nature or character of the secret and it also denotes the category the secret belongs to. In the light of the definition of the word "official" as relating to any public service the words "official secrets" read together must therefore refer to secrets relating to any public service, or public service secrets or Government secrets. Now, what is meant by secret? It is important that a true and proper meaning be found. Since 'secret' is not defined it seems proper that the grammatical meaning of the word be also looked at. The meaning of the word as used in the Act must, however, be consistent with the whole of the provisions of the Act and the language used as well as the purpose for which the Act has been enacted.

The word "secret" is stated in the Shorter Oxford Dictionary as "kept from public knowledge or from the knowledge of persons specified". Bearing in mind the meaning assigned to the word "official" secret official information clearly relates to Government information kept from public knowledge or from knowledge of persons specified. Whether in any particular case any document or information the Government requires it to be kept from public knowledge or from knowledge of persons specified depends on the man-

ner the Government treats that document or information. The prosecution have adduced evidence principally through Encik Abdullah Kassim the Deputy Secretary-General of the Ministry of Defence and Chairman of the Tenders Board, charged with the responsibility of handling matters relating to the purchase and conducting the whole of the tender exercise, to show that all the documents, information, report, etc., relating to or in connection with the tender exercise were classified as confidential.

Quite apart from the unequivocal testimony of Encik Abdullah that the Government has treated the document and information as confidential there is above all standing Treasury direction that all papers and documents related to or connected with tenders are to be so kept.

In my judgment there is no doubt whatever that all information contained in the documents relating to and associated with the tender exercise such as the Staff Requirement Paper, technical brochures, evaluation report, tender briefs (as well as supplement tender briefs), minutes of meetings, negotiations of working committee, negotiation notes, contract documents and so forth were secret official information irrespective of whether the documents were classified 'Rahsia' (secret) or 'Sulit' (confidential). The documents and information were clearly those which section 8 of the Act requires that they be protected from disclosure to unauthorised persons.

Encik Abdullah Kassim repeatedly stated in evidence that those documents were kept confidential and had to be so kept until they are declassified or until Government decides to make an announcement at some later date. This statement that came from a very senior and responsible Government official in the Ministry of Defence and Chairman of the Tenders Board which handled the purchase of the four strike crafts required for the Royal Malaysian Navy, has not, in my view, been challenged or contradicted despite all conceivable attempts made by the defence to create confusion in the mind of this officer during cross-examination. The fact that the documents were classified or marked secret or confidential was irrelevant. Abdullah Kassim's testimony also confirms as to the manner the Government, as owner, has treated such documents and information.

On behalf of the prosecution it is submitted that all tender documents and associated documents were kept confidential even after they were distributed to members of the Board because there was still the decision which had to be made and before a decision was taken every tenderer was in competition with one another. It is revealed in *Rex* v. *Crisp and Homewood*[5] that even after the completion of the negotiations and the signing of the contract all information contained in the negotiation notes and contract documents do not cease to be secret. In that case *C* was formerly a clerk in the War Office serving in a section relating to a clothing contract. Subsequently, he was transferred to some other department. He used to return and collect certain particulars which he handed over to *H*, a contractor and secretary of a firm of tailors. The information was collected from copies of documents containing particulars of past contracts between the War Office and contractors for the Army clothing. Proceedings were taken against *C* and *H* under section 2 of the Official Secrets Act, 1911. The counsel for the defence in that case argued that the contracts to which the price referred to were all completed and past contracts. It was also argued that while an offer was under tender it was only fair to the contractors that they should not know mutually each one what the other was offering or that people who were going to tender should know what people might have already tendered at because that interfered with the fair competition for the contract. But when the contract was made the objection to that had gone, and there was no reason why it should be kept secret. That was, of course, why the very obvious precaution was taken that tenders were marked "confidential".

Avory J. found that Crisp had in his possession information which he had obtained owing to his position as a person who held office under His Majesty and had communicated that information to a person other than a person to whom he was authorised to communicate it. Referring to the confidential character of the information, the learned judge had this to say:

> "The next point is that this is not information of a confidential character and it not within the description of 'official secrets'. It is a well-known proposition in the construction of a statute that the enacting words of it are not to be cut down or limited by the title of the Act, although where there is any ambiguity the title of the Act may assist to construe it. But when there is no ambiguity in the enacting part of the statute the words cannot be altered or limited merely by the title 'Official Secrets.' Even if it could I think there is evidence that these documents were official secrets. Certainly there can be no question that these documents contained information which had been obtained by Crisp owing to his position. It seems to be that section 2 applies to any document or information of a official character which has been obtained by a person holding office under His Majesty, provided, of course, that he communicates it to some person to whom he was not authorised to communicate it. Again, it is suggested that it was not prejudicial to the interest of the State to communicate it. That argument overlooks the fact that it is the alternative — 'if he communicates it to a person other than a person to whom he is authorised to communicate it or other than a person to whom it is in the interest of the State his duty to communicate it.' I will only say, with reference to these documents and the argument that they are not confidential and cannot be regarded as official secrets, that there appear to me to be many grounds which I need not specify on which the jury might properly come to the conclusion that this information was or might be useful to the person to whom it was communicated."

Having arrived at a finding that the tender documents and associated documents were official secrets, it would mean that a Government servant who communicates such information does so in contravention of the Act and he commits an offence under section 8(1) if he communicates such information to a person other than a person to whom he is duly authorised to communicate it or a person to whom it was his duty to communicate it.

On the facts before the court it is abundantly clear that the information communicated to the accused was Government information on the purchase of four fast strike crafts as were contained in various documents relating to or associated with the tender exercise, the whole of which were treated as confidential. The defence has nevertheless argued that the information need not have come from only the Government sources. In my view it is useful to bear in mind the nature and

type of information disclosed by the accused to the members of the Selangor Graduates' Association, the Editor of the *Far Eastern Economic Review* as well as the content of the publication in the Rocket in considering the source of that information. If the information had come from one of the tenderers or a person other than someone from the Government would he know the exact number of tenderers, the identity of the four shortlisted tenderers, the successful tenderer, the original and consolidated prices submitted by the successful tenderer, the mode of payment and cost of the four strike crafts. Apart from the nature of the information disclosed it is evident from the statement made by the accused to the police as contained in Exhibit P10 that he first received an anonymous letter dated August 6, 1976 and subsequently someone called Khamis saw him and Khamis claimed to be the writer of the letter. If that were so then Khamis was clearly the sole source of information and it was the information communicated to him by Khamis that the accused divulged to members of the Selangor Graduates' Association. In the statement given by the accused to the police he said among other things as follows —

"Sometime in August 1976 a person who claimed to be the writer of the letter which I earlier received came to see me in my house in Malacca and discussed the Spica M matter. This was the first time I saw this person. He was a Malay aged approximately between 30 to 40 years. He was fairly intelligent. He did not give me the impression that he was from the Armed Forces. Whatever I raised and spoke about the Spica M at the Horizon Restaurant and said in the Far Eastern Economic Review and the Parliament was as a result of the earlier letter I reseived and the discussion I had with this person. Our discussion lasted for about an hour. Subsequently, I met this person again in Kuala Lumpur in about the month of September 1976. I have not met him since. He identified himself as Khamis. He did not leave any address with me and I would not be able to contact him again if I wish."

On the materials before the court, confirmed by the police statement, I form the view that whoever this person was who gave the information to the accused must have been either a Government servant or, if not, a person who had received the information wrongfully communicated to him by a Government servant. Even if Khamis was not a Government servant so long as he received it from a Government source and thereafter wrongfully communicated such information to the accused, he too had acted in contravention of the Act unless, of course, the evidence warrants a finding that Khamis was a person to whom the Government servant was duly authorised to communicate it or to whom it was the duty of that person to communicate it.

In the circumstances of this particular case I am unable to conclude that whoever this Government servant was who wrongfully communicated the information to the accused was duly authorised to communicate it or it was his duty to do so. It is the prosecution case and I do find as a fact that no one was authorised to communicate any information connected with or related to the tender exercise to anyone as the whole exercise was conducted on the basis of confidentiality. There is also not a shred of evidence to show that it was the duty of whoever this Government servant was to communicate such information to the accused.

Speaking of duty to communicate information by a civil servant, I am of the view that that duty must be construed in the light of his duty as a Government servant that he owes to his superior or ministers. It would be stretching the language of the Act to construe that he owed a duty to the accused, or to any other person. Now, so long as he wrongfully communicated such information to the accused or to any other person without being duly authorised to do so he had clearly committed an offence in contravention of section 8(1) of the Act. And if Khamis had received the information from a Government servant he became a link in the chain of unauthorised communication and any communication by him would also be unauthorised.

It is submitted by Mr. Blom Cooper on behalf of the accused that the testimony given by Encik Abdullah Kassim shows that the source of the leakage was not discovered and even if the leakage was partly from a Government source there was no evidence whether the person who disclosed it was authorised or unauthorised. It is true that there is no evidence to show who leaked the information but the prosecution have adduced evidence to show that Government information had leaked and the irresistible inference that can be drawn from the facts proved was that the leakage was from the Government source and whoever had disclosed the information had done so without authority.

There is abundance of evidence in the case to show that there was unauthorised communication. The nature of the information communicated to the accused clearly shows that the leakage must necessarily have originated from a Government source, from someone who had access to documents associated with the tender exercise. For this reason it is my finding that Khamis or whoever this person was had obtained the official information in contravention of the Act and had wrongfully communicated it to the accused.

That brings me to the next question, that is, whether the accused received such information. In this regard I find there is not the slightest difficulty in coming to the conclusion that the accused did receive the secret information as alleged by the prosecution. The accused himself has admitted in the police statement that he was in receipt of the information. The other elements connected with the receipt that the court must be satisfied are that he received the information contrary to his desire and that at the time he received such information he knew or had reasonable ground to believe that the information was communicated to him in contravention of the Act. Judging from the conduct of the accused there is hardly any doubt at all that the accused received the information in accordance with his desire and not contrary to it.

As for the knowledge or mental element, the case of *Rex* v. *Fell*[6] has been cited as authority to show that the offence under section 2(1) of the Official Secrets Act, 1911 equivalent to section 8(1) of our Act, is absolute. However for myself I cannot accept that authority in regard to an offence under section 8(2) of the Act. *Mens rea* does not seem to be one of the elements required under section 2(1) but the same cannot be said of section 2(2) of the Official Secrets Act, 1911.

In *Fell's* case *F* pleaded guilty to eight counts of unlawfully communicating documents contrary to section 2(1) of the Official Secrets Act, 1911. The Court of Criminal Appeal in dealing with the criteria for determining the seriousness of the offence on a submission made on her behalf that she had acted on her own initiative out of zeal instead of referring to her superior and that the prosecution had accepted she had no intention of doing anything to prejudice the safety of the State it was held that the offence is absolute and is committed, whatever the document contained, whatever the motive for disclosure is and whether or not the disclosure is prejudicial to the State.

As for the offence under our section 8(2) I am inclined to think that the words "knowing or having reasonable ground to believe" used in that section do signify that mental element or knowledge is the essence of the offence created.

For the present case the court is satisfied that sufficient materials exist for the court to draw the necessary inference that the accused had reasonable ground to believe the official information was communicated to him in contravention of the Act. Looking at the nature of the information received, the accused cannot conceivably claim that he had no reasonable ground to believe at the time when he received it the information was communicated to him in contravention of the Act. In considering knowledge it is pertinent to bear in mind the source of the information as well as the circumstances under which the information was communicated.

Speaking of the source of unauthorised disclosure, the prosecution is even contending that there is no such person as Khamis as alleged by the accused. Be that as it may, I do not think it really matters whether or not there was such a person called Khamis. What this court must not lose sight of is the suspicious and mysterious circumstances under which the accused alleged he received such information. The accused is no ordinary person. He is intelligent, well-educated and highly qualified apart from being a Member of Parliament and leader of the Opposition. He ought to have suspected that such person was communicating to him information he was not authorised to communicate. For a person in the position of the accused he also ought to have known or have had reason to believe that the person was wrongfully communicating such information to him. It is indeed difficult to accept his explanation that he made no attempt whatsoever to know more about that person, who he was and where he lived at least how to get in touch with him. My impression is that the accused was in fact covering the source of his information. He flatly refused to disclose that information on the first two occasions when police statements were recorded from him. He claimed Parliamentary privilege and yet he made no such claim in the statement recorded in March this year. It was only then that he alleged he received the secret information from the so-called Khamis.

It is revealed that the first information he received was by way of the anonymous letter. The fact that the first information was communicated by way of the anonymous letter ought to have immediately aroused the accused's suspicion that the writer was communicating to him information unlawfully obtained.

In the final analysis I would say that whether or not the accused had reasonable ground to believe the information communicated to him was in contravention of the Act is strictly a question of fact. *Mens rea* or guilty mind is necessarily associated, from the judicial point of view, with knowledge of fault or a mind at fault. Before there can be a commission of an offence there must, in the instant case, be some reasonable knowledge that at the time of the receipt, whoever communicated the said information to him had done so wrongfully. In determining guilty knowledge or a mind at fault you cannot break open the heart of a man or his head to see his state of mind. In the instant case therefore, the court can only draw inferences from the circumstances surrounding the receipt of the said information, the nature of the documents and information communicated and the conduct of the accused in the matter.

The accused has claimed that he received the information from one Khamis and in this respect I have dealt with earlier the circumstances under which he received the information and I have also said that I am unable to accept his explanation that he made no attempt whatsoever to know more about the person, who he was and where he lived, at least how to keep in touch with him. From the documents received and the information communicated to him, the accused was fully aware that the information communicated to him was in regard to identities of tenderers, the four shortlisted tenders, the successful tenderer, the consolidated prices, the fire control system, etc., the sort of information which must be kept strictly confidential. It is not open to the accused to say that he did not know the documents were secret or that the information was secret. It is therefore my finding that the prosecution have proved to my satisfaction that no one was authorised to communicate the information and if Khamis had done so clearly he did it without authority and had therefore acted in contravention of the Act. He is caught by section 8(1) of the Act.

The learned Solicitor-General quite rightly submitted at the close of the prosecution case that if it was true there was a meeting between the accused and Khamis as claimed by the accused, it was clearly a meeting in the privacy of his own home by appointment and not a chance meeting such that the accused knew and appreciated that the information which he received and conveyed by this unknown person must have been information obtained contrary to the Act.

Incidentally, Dr. Tan Chee Khoon also received an anonymous letter at about the same time when the accused received it but contrary to the conduct of the accused, Dr. Tan made no disclosure to anyone except to forward it to the Prime Minister. The accused did that too but evidently he was not prepared to wait indeed had no intention of waiting for any reply from the Prime Minister. Regardless of the nature of the information received, his attitude was that, here was a superb opportunity to make an issue

of it under the cloak of Parliamentary privilege. What seemed uppermost in the mind of the accused was to capitalise on it, indifferent to the truth or falsity of the information and completely unconcerned whether or not his allegations were warranted. When he spoke at the Selangor Graduates' Association luncheon talk he virtually pronounced judgment without trial branding the purchase of the crafts as a scandal recklessly and in such a manner that his motive was a suspect. Although this court is in the main not concerned with the motive, it is manifest that the accused was so obsessed with the desire to project the image of his own party or perhaps his own that, contrary to what he declared under cross-examination, he has in fact placed self-interest above the national interest.

Although motive is not strictly relevant it cannot however be totally ignored. In the circumstances of this case it has some bearing on the conduct of the accused and it seems pertinent to the determination of the mental element and the question as to whether he had failed to take reasonable care of the said information to prevent its publication. The reason given by him in the police statement and I quote,

"I wrote a letter to the Honourable Prime Minister to look into the matter and review the award of the tender. This letter according to my second letter to the Honourable Prime Minister was dated 10-8-76. My second letter was in Romanized Malay and dated 28-8-76. Both letters were on the same subject. I did not receive a reply or acknowledgement to my two letters which I sent in August, either in August or September 1976. I felt the matter was of pressing public importance and I felt it my duty to bring it to the attention of the authorities by various means",

shows that he wanted to bring the matter to the attention of the authorities because he did not receive any reply to his two letters. That is not true and he knows it. He sent a second letter only after he had spoken at the Selangor Graduates' Association talk. In the evidence given by him he stated that he was annoyed there was no reply. He also said that when he spoke to the members of the Selangor Graduates' Association there was then no response on the part of the authorities concerned and he therefore felt it was his duty to use other avenues to bring to the attention of higher authorities and he spoke with the hope of getting attention so that matters could be righted. But what I cannot understand is why he considered it necessary to divulge the information to the Selangor Graduates' Association when he himself was fully conscious of the fact that he could not get an early reply because as he had stated at the talk, the Prime Minister was busy over his visit to Burma and the Non-Alliance Conference in Colombo. He even expressed doubt that the Prime Minister would have time to attend to it. It is therefore implicit that his contention that the non-reply to his letter may therefore be regarded as a waiver is completely untenable. In fact the conduct of the accused was such that it is inconceivable to conclude that he was really interested in waiting for the reply. It is therefore most apparent that the delay, as he puts it, could not be the real reason for divulging the information to the Selangor Graduates' Association. The reckless conduct of the accused is further evident from the cross-examination of Encik Abdullah Kassim and Encik Anuar when both were alleged to have received kickbacks although he knew full well he had not a shred of evidence to justify the allegations. The contention of the accused was such that it may well be a surge of power had given rise to an acute obsession against authority influenced by his neurotic conviction of Parliamentary control over Government abuses to such a degree that he has become a casualty of his own mental corruption.

I have dealt at length with the various issues that have arisen in this case and it seems appropriate at this juncture that I direct my attention to the following contention made by the defence as follows —

(a) that the disclosure to the accused was authorised;

(b) if disclosure has not been specifically authorised there is an implied authority to disclose specifically to Members of Parliament by virtue of their status;

(c) implied authority to disclose what would be otherwise unauthorised disclosure of anything that constitutes impropriety on behalf of the Government;

(d) that the prosecution failed to prove disclosure was not authorised; and

(e) disclosure has been waived — and all disclosures after that are also waived as the confidentiality is waived by the disclosure in Parliament.

I shall first of all examine the validity of the defence contention that the prosecution failed to prove that disclosure was not authorised. I have pointed out earlier there was evidence to show that the whole of the tender exercise was conducted on the basis of confidentiality and I have concluded that if the person who communicated the official information was a Government servant he could not have been duly authorised to do so as the accused was not the person to whom it was the duty of this person to communicate it. I have also concluded that even if the so-called Khamis was not a Government servant the information he obtained must inevitably have come from Government source, in either case, each had acted in contravention of the Act for wrongful communication of the official information in communicating the information to the accused. With reference to the first charge I have also concluded that the accused had reasonable ground to believe at the time he received such information that official information was communicated to him in contravention of the Act.

While on the subject of implied authority to disclose I shall now proceed to examine the merit of the defence contention that in the absence of specific authority there is an implied authority to disclose to a Member of Parliament by virtue of his status.

It is a valid proposition and it has been brilliantly submitted to me with a high degree of persuasiveness. It is undeniable that disclosures are made to Members of Parliament of Government information from time to time and invariably Members of Parliament do raise questions in Parliament pertaining to the information received and, if they so choose, even introduce accusations that may not have any basis whatever. They are entitled to ask questions, raise the issues in the debates or even introduce motion on any such matter in Parliament even though the matter so raised or introduced is without any merit whatsoever. The

information contained in the disclosure may properly be discussed or deliberated in the proceedings in Parliament even though the disclosure may otherwise be held to be a breach of the Official Secrets Act if it is done outside Parliament. The protection is derived from the privilege that Members of Parliament enjoy in regard to freedom of speech and debate or proceedings in the Houses of Parliament. Such freedom of speech and debate or proceedings shall not be liable to be impeached or questioned in any court or Tribunal outside the House (section 3 of the Houses of Parliament (Privilege and Powers) Ordinance, 1952). And under section 8 of the same Ordinance there is another provision to the effect that "No Member shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he may have brought by petition, bill, resolution, motion or otherwise or have said before the House or any Committee." There is also Article 63 Clause 2 of the Federal Constitution which provides that "No person shall be liable to any proceedings in any court in respect of anything said or any vote given by him when taking part in any proceedings of either House of Parliament or any Committee thereof."

It may perhaps be appropriate at this point to analyse very briefly the nature of the Parliamentary privilege in so far as pertinent to this case, enjoyed by Members of Parliament. In *Erskine May's* Parliamentary Practice 18th Edition page 64 speaking of the general view of the privilege of Parliament it is stated that

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. This privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law."

As I indicated earlier, the privilege of freedom of speech is one of the privileges enjoyed by a Member of Parliament and "subject to the rules and order in debate (see Chapter XIX), a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege for any action of libel as well as for any other question or molestation."

In this connection, however, the privilege does not protect a Member publishing his own speech apart from the rest of a debate. At page 78 of *Erskine May* it is stated as follows —

"If a Member publishes his speech, his printed statements becomes a separate publication, unconnected with any proceedings in Parliament.

Abingdon's Case, 1975 — An information was filed against Lord Abingdon for a libel. He had accused his attorney of improper professional conduct, in a speech delivered in the House of Lords, which he afterwards published in several newspapers at his own expense. Lord Abingdon pleaded his own case in the Court of King's Bench, and contended that he had a right to print what he had, by the law of Parliament, a right to speak; but Lord Kenyon said, that 'a Member of Parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel.' The court gave judgment that his lordship should be imprisoned for three months, pay a fine of £100, and find security for his good behaviour (m).

Creevey's Case, 1813 — Mr. Creevey, a member of the House of Commons, had made a charge against an individual in the House, and incorrect reports of his speech having appeared in several newspapers, Mr. Creevey sent a correct report to the editor of a newspaper, with a request that he would publish it. Upon an information filed against him, the jury found the defendant guilty of libel, and the King's Bench refused an application for a new trial (n). Mr. Creevey, who had been fined £100, complained to the House of the proceedings of the King's Bench; but the House refused to admit that they were a breach of privilege."

May I refer to page 156 of *Erskine May* where it is stated that the special position of a person providing information to a Member in the exercise of his Parliamentary duties has been regarded by the courts as enjoying qualified privilege at law. With reference to the application of the Official Secrets Act, 1911, it is pointed out that the application of that Act "to persons giving information to Members is subject to the provision of section 2(1) of the Act which provided that a person who communicates information to a person other than one to whom he is authorised to communicate it commits no offence provided that the person to whom he does communicate it is one to whom it is in the interest of the State his duty to communicate it."

For the purpose of section 8(1) of our Act, it may therefore be said that a person giving information to a Member of Parliament is subject to the section which provided that a person who communicates information to a person other than a person to whom he is duly authorised to communicate it commits no offence provided that the person to whom he communicates it is one to whom it is his duty to communicate it.

In this regard the Solicitor-General in his submission at the close of the case for the prosecution submitted that there is defence if it was the duty of the Government servant to communicate the information. He however added that the defence must be founded on the express words of the proviso to the Act and it is not derived from any sense of privilege and cannot be regarded as a matter of privilege.

He also submitted that this particular defence of duty to disclose must be founded on the very words of the Act itself and in each individual case the burden of proof would lie upon the officer and the Member of Parliament concerned to show that circumstances of disclosure are such as to give rise to the duty, and such circumstances would only be shown in exceptional cases. It is not a mere matter of allegation but he has to show that this duty which has been claimed did really arise. It would be highly dangerous to give any colour to the view. It is contended that the mere election to Parliament does not create a general duty towards a person elected on the part of the depositories of official secrets to disclose the secrets without authorisation.

It is further submitted that it would have been different, for example, if somebody has in his possession information relating to the toppling of the Government as in that case he can pass the information to somebody. It is said that this duty was a duty of a citizen to maintain the lawful Government.

I am aware that these provisions exist, but what I cannot find is a provision or an authority to the effect that a Member of Parliament, by virtue of his status as such, is privileged to receive official information otherwise unauthorised. There will most certainly be a chaotic state of affairs in the country if validity is given to the defence contention that for any disclosure to a Member of Parliament by reason of his status as such of official information by a Government servant there is in law an implied authority on the part of the officer to make such disclosure. I reject such a contention unless of course it is shown that it is the duty of that Government servant to disclose to a particular person and that that person is the person to whom the officer has a duty to disclose, for instance, a minister who is also a Member of Parliament.

To invoke the doctrine of implied authorisation to enable him to do so the nature of the Government servant's job must be such that disclosure of such information is probably regarded as part of the job of the officer concerned. It is therefore, not correct to say that to sanction a Member of Parliament, by reason of his status, to receive official information from a Government servant, a disclosure which if made to another is otherwise unauthorised, is indeed to place a Member of Parliament in a special class of privileged person well above the law. The same way may be said in respect of a Member of Parliament who happens to be or is a leader of the Opposition.

It is, I concede open to argument that in exceptional cases a Government servant may be duty bound to disclose to a Member of Parliament but the occasion in which and the circumstances under which that situation arises must be so exceptional that the true reason that gives rise to the implied authorisation may not really stem from the fact that it was his duty as a Government servant to so disclose to that person but materially it was on account of that person's duty as a citizen. If therefore, a person should have in his possession any information which relates to some exigencies of particular importance to the country as a whole such as matters affecting the national calamity or catastrophe, it is undeniably his duty as a citizen to disclose to someone with the object that the calamity or catastrophe be avoided.

It is appreciated that a Member of Parliament has a duty to perform and it may well be his intention is to force openness in the Government over certain matters. It may also well be the intention is to pronounce clearly something that is of public interest and the only way to do it was to divulge the information through several available avenues to get the message through to the authorities. He is at liberty to do so and to use every available avenue but when he does it outside Parliament he must act within the confines of the law. As a Member of Parliament he is privileged to raise any matter in Parliament as he enjoys immunity from criminal liability. This privilege can only be invoked in respect of proceedings in Parliament and not outside the House. To say that by virtue of his status such privilege is equally applicable outside Parliament and that it may be so invoked is something that I must totally reject.

I shall now move on to the other defence contention that there is implied authority to disclose what would otherwise be unauthorised of anything that constitutes impropriety on behalf of the Government.

It must at the very outset be borne in mind that we are dealing with accusations of impropriety made in an anonymous letter and by an unknown person and as such the credibility of any such accusation should not be readily accepted.

There was I gather some suggestion in the anonymous letter of some impropriety in connection with the Government purchase of four crafts and the so-called Khamis had also made some accusation. To my mind the mere fact that an accusation was made does not necessarily mean that there was any truth in it. It is not at all unlikely that Khamis may have been actuated by malice or may have had a motive of his own when he made the allegations. It is also possible that he had been led to believe, influenced perhaps by some improper considerations, or had been induced by someone to make the allegations that there was some impropriety when, in fact, there was not. Those possibilities cannot at all be ruled out. It is really dangerous to regard any such information as proof or evidence of impropriety. Where do you really draw a line between what is proper and improper and furthermore, how do you determine the propriety or impropriety? In a case such as this how do you decide whether a disclosure of some official information would or would not give rise to or justify the application of the doctrine of implied authorisation. In my considered view, therefore, such a proposition is absolutely untenable in law and completely devoid of any merit.

Finally, it is contended that in the light of the facts in this case, confidentiality had been broken and authority to disclose could be implied.

It is a novel proposition considering that we are dealing with criminal law and I am amazed at the seriousness with which it is argued.

The defence is saying that although a letter was sent by the accused to the Prime Minister following the receipt of the anonymous letter dated August 6, 1976, there was total silence and no intimation whatever was received from the Prime Minister that the information should not be disclosed. I have in this regard stated earlier that although the accused did in fact write to the Prime Minister there was nevertheless evidence to show that he was not prepared to wait and had no intention whatever of waiting for any reply from the Prime Minister. This is evident by the fact that on August 21, 1976, hardly a fortnight had elapsed after the letter was written, the accused took upon himself the liberty to divulge the information to members of the Selangor Graduates' Association. His defence that there was a waiver is therefore totally inconsistent with his conduct at the time of the disclosure. It is manifest that the accused had already made up his mind to disclose the information regardless of the nature of that information. For reasons that I have stated earlier I am firmly of the view that there is no merit whatever in the contention that by reasons of the waiver an authority to communicate to him of the information could be implied.

In the same token I find that the contention that the confidentiality has been waived by disclosure in Parliament is without merit. I would also say that there is no validity whatever to argue that because the Deputy Minister had made a statement in Johore Bahru disclosing that the Government was purchasing four fast strike crafts for the use of the Royal Malaysian Navy there was, therefore, a waiver of the confidentiality of the information disclosed.

It is argued by learned counsel for the defence that even assuming the information had come from the official source the waiver which arose as a result of the non-reply by the Prime Minister to the letter sent by the accused would in effect give rise to implied authorisation of other disclosures. Here too, I find that the contention is devoid of any merit whatsoever. Having regard to the nature of the information, the subject matter and the seriousness of the allegation, I hardly think that there is any substance in such a defence either in law or in fact. Indeed, I feel constrained to hold that such defence is not available in law and even if it can be said that there is I find that the contention on the evidence completely unwarranted in the light of the nature of the information, the seriousness of the allegations and the conduct of the accused in the circumstances of this particular case.

Lastly, with reference to the charges before the court, I have for reasons that I have stated, find that all the elements required to establish the first charge have been proved to my satisfaction and the defence has not in any way raised any defence sustainable in law and in fact, viewed in the light of the whole evidence both the prosecution and the defence.

As for the second charge, it is my finding that all the ingredients required to establish the charge are made out to my satisfaction and it is evident from the police statement recorded on June 30, 1977 that the accused did fail to give on demand the information relating to the commission of the offence to Deputy Superintendent Cornelius when he was required to do so. In considering the defence case I find that there is no defence at all to this charge.

The ingredients required to be established in charges 4 and 5 are in many ways similar and on the evidence before the court I am satisfied beyond any reasonable doubt that the accused had in his possession the official information alleged by the prosecution he had and I am also satisfied that the said information had been obtained in contravention of the Act. It is not in dispute that the accused did directly communicate the said official information to persons to whom he was not authorised to communicate, namely, the members of the Selangor Graduates' Association on August 21, 1976 and the Editor of the *Far Eastern Economic Review* as contained in the letter from the accused published on September 24, 1976.

I have considered the defence case and it is my finding for reasons that I have set out at great length in the body of my judgment that the defence has failed to show any merit on the defences that have been raised and in no uncertain terms I would say that no doubt whatever is raised in my mind on any defences for the court to give the benefit of that doubt to the accused.

Lastly, I find that there is abundance of evidence to satisfy me that the third charge against the accused has been established beyond any reasonable doubt. It is proved that the accused did receive the official information alleged by the prosecution and such official information had been obtained in contravention of the Act. I further find that the accused did fail to take reasonable care of the said information in that he took no steps to prevent publication of the said information in the Rocket, the official organ of the Democratic Action Party of which the accused was the Secretary-General. It is true to say that the accused was not the editor but it is evident that the publication was judging by the conduct of the accused in the circumstances of this particular case made with the consent and concurrence of the accused having manifestly stated that he wanted to use all avenues to draw the attention of the authorities to this particular matter. In law he cannot claim privilege although I accept that the publication was made after the matter relating to the purchase had been raised in Parliament. The publication was clearly not an accurate report of the speech in Parliament. They contain not only unfounded allegations, but also comments and innuendos. As for the other offences I have sufficiently dealt with them earlier on.

It is my considered judgment that the accused is guilty on all the charges preferred against him by the prosecution.

I convict the accused on all charges.

Sentence:

1st charge	:	Fine $5,000 i.d. one year imprisonment.
2nd charge	:	Fine $1,000 i.d. two months' imprisonment.
3rd charge) 4th charge) 5th charge)	:	Fine $3,000 each i.d. 9 months' imprisonment each.

As for sentence, I have taken into consideration the factors submitted by defence counsel in mitigation and having regard also to the circumstances surrounding, in particular the position of the accused as Member of Parliament and Leader of the Opposition desirous of exposing what he considered then to be serious malpractices though somewhat over zealous and impassioned in his pursuit of the matter. I am seriously of the view that this is not a proper case for custodial sentence to be imposed. In my judgment the fine imposed is in the circumstances the appropriate sentence.

Stay of execution granted.

Order accordingly.

Solicitors: *Karpal Singh & Co.*